IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,
Appellee,

vs.

RUDOLPH WILLIAMS,
Appellant.

Case Number W-CR-927

BOND PENDING APPEAL

(Filed November 1, 1968)

We, the undersigned, jointly and severally acknowledge that we and our personal representatives are bound to pay to the United States of America, the sum of Fifteen Thousand Dollars (15,000).

The conditions of this bond are that the appellant, Rudolph Williams, is to appear in the United States District Court for the District of Kansas at Wichita, Kansas, and the United States Court of Appeals for the Tenth Circuit, in accordance with all orders and directions of said courts as may be given or issued;

That defendant is not to depart from the District of Kansas, except in accordance with such orders as may be issued by the United States District Court for the District of Kansas.

And, further, that defendant is to abide any judgment entered in such matter by surrendering himself to serve any sentence imposed, and obeying any order or direction in connection with such judgment as the court may prescribe.

If the defendant appears as ordered and otherwise obeys and performs the foregoing conditions of this bond, then this bond is void, but if the defendant fails to obey or

perform, payment of the amount of this bond shall be due forthwith.

If bond is forfeited, and if the forfeiture is not set aside and remitted, judgment may be entered upon motion in the United States District Court for the District of Kansas against each debtor jointly and severally for the amount above stated, together with interest and costs, and execution may be issued and payment secured as provided by the Federal Rules of Criminal Procedure and by other laws of the United States.

It is agreed and understood that this is a continuing bond which shall continue in full force and effect until such time as the undersigned are duly exonerated.

This bond signed this 23 day of October, 1968, at Leavenworth, Kansas.

/s/ Rudolph Williams
Defendant
United Bonding Insurance Company
Surety
By /s/ Robert E. Dobson
Attorney-in-Fact
By /s/ Rudolph Williams

Signed and acknowledged before me this 23rd day of October, 1968.

/s/ Carl F. Zarter
Carl F. Zarter
Administrative Assistant
Classification & Parole
U. S. Penitentiary
Leavenworth, Kansas

Approved .....
United States District Judge

Approved .....
United States Attorney

Now on this 1st day of November, 1968, the above and foregoing bond has been by me approved; with the condition that the defendant is not to depart from the District of Kansas, except on order of the Court, and that his liberty under the bond shall also include Jackson County, Missouri, as well as the State of Kansas. Upon the filing of this bond the defendant shall be forthwith released from the United States Penitentiary at Leavenworth, Kansas.

/s/ Frank G. Theis
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA, Plaintiff
v.
RUDOLPH WILLIAMS, Defendant
Criminal Action No. W-CR-927

ORDER FORFEITING BAIL

(Filed December 30, 1968)

Now on this 24th day of December, 1968, this matter comes on upon the motion of the plaintiff, United States of America, to forfeit the bond of the defendant and to recommit the defendant to the United States Penitentiary at Leavenworth, Kansas; the plaintiff is present by and through Guy L. Goodwin, Assistant United States Attorney for the District of Kansas; the defendant, having been notified, appears not, and his attorney, Eugene L. Pirtle, having been notified, appears not.

After hearing evidence and being advised in the premises, the Court finds that the defendant, Rudolph Wil-

liams, has violated the terms of his bond and is a danger to others and to the community, and that the bond entered in the sum of $15,000.00, executed by the United Bonding and Insurance Company, should be forfeited.

IT IS THEREFORE ORDERED that the bond of the defendant, Rudolph Williams, in the sum of $15,000.00 and executed by United Bonding and Insurance Company, be and the same hereby is forfeited.

IT IS FURTHER ORDERED that the United States Marshal forthwith apprehend the defendant, Rudolph Williams, and recommit him to the United States Penitentiary at Leavenworth, Kansas.

/s/ Frank G. Theis
Judge

Approved:

/s/ Guy L. Goodwin
Guy L. Goodwin
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA, Plaintiff v. RUDOLPH WILLIAMS, Defendant	**Criminal Action No. W-CR-927**

ORDER

(Filed April 14, 1969)

Now on this 24th day of March, 1969, this matter comes on for the attention of the Court upon the motion for judgment of default. The plaintiff, United States of America, appears by Bernard V. Borst, Assistant United States Attorney for the District of Kansas; the defendant, Rudolph Williams, appears not; United Bonding Insurance Company, by Robert E. Dobson, Kansas City, Missouri, attorney in fact, surety, appears not; and Mr. James Woodson, 1800 Harrison, Topeka, Kansas, attorney for the surety, appears not.

After being advised in the premises and hearing evidence and statements of counsel, the Court finds that judgment should be granted against the defendant, Rudolph Williams, and United Bonding Insurance Company, by Robert E. Dobson, Kansas City, Missouri, attorney in fact, surety, in the sum of $15,000.00.

IT IS SO ORDERED.

/s/ Frank G. Theis
Judge

Approved:

/s/ Bernard V. Borst
Bernard V. Borst
Assistant United States Attorney

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

MAY TERM, 1971

RUDOLPH WILLIAMS,
and
UNITED BONDING INSURANCE
Company,
Surety-Appellant.
vs.
UNITED STATES OF AMERICA,
Appellee.

No. 472-70

Appeal from the United States District Court
for the District of Kansas
W-CR-927

(Filed June 30, 1971)

Lewis E. Pierce of Pierce, Duncan, Bill & Russell, Kansas City, Missouri (Robert G. Duncan of Pierce, Duncan, Bill & Russell and James E. Woodson of Topeka, Kansas with him on the brief) for Appellant.

Edward H. Funston, Assistant United States Attorney, Wichita, Kansas (Robert J. Roth, United States Attorney and Stephen K. Lester, Assistant United States Attorney on the brief) for Appellee.

Before PICKETT, Senior Circuit Judge, HOLLOWAY, Circuit Judge, and BRATTON, District Judge.

BRATTON, District Judge.

This is an appeal from an order of the court below denying appellant's motion to set aside the judgment and forfeiture previously entered against it as surety on a bond for Rudolph Williams.

Williams was convicted of bank robbery in August of 1968. He was sentenced to a prison term of ten years

and remanded to the custody of the Attorney General. He subsequently filed a notice of appeal and, when appellant posted its bond in the sum of $15,000.00 on November 1, 1968, was released from the federal penitentiary at Leavenworth, Kansas, pending the outcome of his appeal.

On December 18, 1968, Williams was arrested and confined to jail by state authorities upon a charge stemming from events subsequent to his release from Leavenworth.

Two days later the United States Attorney filed in the court below a motion pursuant to *18 U.S.C. § 3148* to recommit Williams and to have his bail forfeited. A copy of this motion, together with the court's order setting a hearing on the motion on December 24, 1968, was served upon Williams in jail and upon his court-appointed trial counsel.

Neither Williams nor his counsel appeared at the hearing, and no one representing the bonding company was present. Testimony at the hearing revealed that Williams was being held in connection with the investigation of an armed robbery and a homicide.

At the conclusion of the hearing, the court found that Williams was a danger to other persons and to the community and revoked his liberty under the bond. The bond was also ordered forfeited on the ground that the defendant had violated the terms and conditions of the bond.

In January, Williams was discharged after a preliminary hearing on the state charges against him, and he was taken into federal custody and returned to Leavenworth.

On March 7, 1969, the government filed a motion for judgment of default on the bond against Williams and his

surety on the ground that the failure of Williams to appear had violated that condition of his bond requiring his appearance when ordered by the court.

Notice of this motion and the court's order setting a hearing on it on March 24, 1969, were mailed to Williams, the surety, and the surety's attorney.

Again, no one appeared for Williams, and no one appeared for the bonding company. The court then granted the government's motion to forfeit Williams' bond and granted judgment against Williams and the bonding company in the sum of $15,000.00.

The surety, under *Fed. R. Crim. P. 46(f)(4)*, moved on April 21, 1969, to set aside the judgment and forfeiture of bail upon the grounds that Williams' default was not willful, that his performance of the bond's conditions was rendered impossible by act of law and that the government had suffered no injury or cost by his failure to appear.

Oral arguments were had on this motion in June of 1969, and counsel thereafter submitted briefs on the issues.

In April of 1970, the court denied the motion, and, after an unsuccessful attempt to get a rehearing below, the surety filed this appeal.

It is contended here that the trial court abused its discretion in denying the motion to set aside the judgment and forfeiture, and we are asked to reverse and remand this cause with directions to enter an order sustaining the motion and ordering a remission of the entire bond. For the reasons discussed below, we decline to do so.

Williams breached a condition of his bond when he failed to appear on December 24, 1968. The bond contained language requiring him to appear in accordance

with all orders and directions of the court. The order entered below which was served upon Williams, together with the Government's motion was, in substance, an order to appear, *Babb* v. *United States*, 414 F.2d 719, 720 (10th Cir. 1968), and Williams could not but have known that his presence was required. See *United States* v. *DePugh*, 434 F.2d 548, 552 (8th Cir. 1970).

That the court revoked bond pursuant to *18 U.S.C. § 3148* is clear from the transcript of the hearing of December 24, 1968. That it ordered the bond forfeited for Williams' failure to appear on that date is also reflected by the transcript. Testimony at the hearing disclosed Williams' whereabouts, so that the court below, in ordering the forfeiture, in essence found that his non-appearance was not excused by the fact of his detention by other authorities.

It is the general rule that imprisonment by other authorities does not excuse production of the principal by the surety, *Sifuentes-Romero* v. *United States*, 374 F.2d 620 (5th Cir. 1967); Annot., 4 A.L.R.2d at 446 (1949), and the argument of the surety that the failure to notify it of the revocation and forfeiture hearing somehow overcomes this rule is without merit. *Babb* v. *United States*, *supra* at 723. A bond is a contract between the surety and the government that the surety will undertake that the defendant who has been released on bond will appear at any specified time and place. *United States* v. *Davis*, 202 F.2d 621 (7th Cir. 1953). This is exactly what did not happen in the present case, and the circumstances surrounding Williams' failure to appear do not relieve the surety from the forfeiture declared.

Secondly, the record below reflects that all concerned parties were aware of the March hearing on the government's motion for default, and the surety made no attempt

to be present or to in any way show the court that a default judgment should not be entered.

After the default judgment had been entered, the bonding company tardily took notice of the matter and filed a motion to set the judgment aside.

Its motion was heard orally and upon written briefs. Neither then, nor in this court, has the surety ever offered any reason for its failure to appear and present any defenses it may have had to the forfeiture of the bond. Upon such circumstances it is not entitled to relief from the judgment enforcing the forfeiture, see *United States* v. *Fletcher*, 279 F. 160 (W.D.Tex. 1922); *Fed. R. Crim. P.* 46(f)(4). Under the provisions of Rule 46, the setting aside of a forfeiture and remission thereafter are not matters of right, but are discretionary with the court, and the only question before us is whether the court below abused its discretion in determining that justice required enforcement of the forfeiture. *Babb* v. *United States*, *supra* at 724. No abuse of discretion appears here.

In view of this conclusion, no other issue raised on this appeal need be reached.

AFFIRMED.